
INTERNATIONAL LAW STUDIES

Published Since 1895

Maritime Police Law of the People's Republic of China

Raul (Pete) Pedrozo

97 INT'L L. STUD. 465 (2021)

Volume 97



2021

Published by the Stockton Center for International Law

ISSN 2375-2831

Maritime Police Law of the People's Republic of China

*Raul (Pete) Pedrozo**

CONTENTS

I.	Introduction.....	466
II.	Analysis.....	467
III.	Maritime Law Enforcement Use Of Force	471
IV.	Conclusion	476

* Captain Raul (Pete) Pedrozo, JAGC, U.S. Navy (Ret.), is the Howard S. Levie Professor of the Law of Armed Conflict at the Stockton Center for International Law, U.S. Naval War College. After his retirement from the U.S. Navy he was a Professor of International Law at the Naval War College and Principal Deputy Staff Judge Advocate, U.S. Indo-Pacific Command. On active duty, he served in senior positions in the Department of Defense, including Staff Judge Advocate, U.S. Pacific Command, and Special Assistant to the Under Secretary of Defense for Policy.

The thoughts and opinions expressed are those of the author and not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.

I. INTRODUCTION

On January 22, 2021, the Standing Committee of the 13th National People's Congress adopted the Maritime Police Law of the People's Republic of China (MPL), which took effect on February 1, 2021.¹ The MPL purports to regulate the duties of China's maritime police agencies, led by the China Coast Guard, and safeguard China's sovereignty, security, rights, and interests. It applies in sea areas under the jurisdiction of the People's Republic of China (PRC).² Specifically, under the MPL, the maritime police agencies will carry out maritime safety and security, maintain maritime security and order, combat maritime smuggling, supervise the development and utilization of marine resources, protect the marine ecological environment, and conduct marine fishery production operations.³ The MPL, therefore, has potentially far-reaching application, as China claims extensive maritime areas off its mainland and Hainan Island,⁴ as well as sovereignty over the South China Sea (SCS) islands and adjacent waters, and sovereign rights and jurisdiction over the relevant waters, seabed, and subsoil encompassed by the nine-dash line.⁵

This expansive application of law enforcement jurisdiction is problematic given that most (if not all) of China's maritime claims are inconsistent with the United Nations Convention on the Law of the Sea (UNCLOS).⁶ China's straight baselines along its mainland coast and around the Paracel

1. Maritime Police Law of the People's Republic of China art. 84 (promulgated by Standing Committee, 13th Nat'l People's Cong., Jan. 22, 2021, effective Feb. 1, 2021) XINHUA NEWS AGENCY, Jan. 22, 2021, <http://politics.people.com.cn/n1/2021/0123/c1001-32009344.html> [hereinafter MPL].

2. *Id.* arts. 1, 3, 10.

3. *Id.* art. 5.

4. U.S. DEPARTMENT OF DEFENSE REPRESENTATIVE FOR OCEAN POLICY AFFAIRS, MARITIME CLAIMS REFERENCE MANUAL, https://www.jag.navy.mil/organization/code_10_mcrm.htm (last visited Feb. 5, 2021).

5. Note Verbal, Permanent Mission of the People's Republic of China to the United Nations, Notification Regarding the Joint Submission by Malaysia and Vietnam to the Commission on the Outer Limits of the Continental Shelf Concerning the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles, Ref. No. CML/17/2009 (May 7, 2009), https://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009_re_mys_vnm_e.pdf.

6. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]. See Raul "Pete" Pedrozo, *China's Legacy Maritime Claims*, LAWFARE (July 15, 2016), <https://www.lawfareblog.com/chinas-legacy-maritime-claims>.

Islands are not in conformity with UNCLOS.⁷ These excessive baselines allow China to illegally extend its various maritime zones. China also impermissibly claims the right to require prior permission for warships to transit its territorial sea in innocent passage, authority to regulate non-resource-related military activities in the exclusive economic zone (EEZ), exercise security jurisdiction in its contiguous zone (reiterated in Article 28 of the MPL), and establish an unlawful air defense identification zone in the East China Sea (ECS).⁸ Of note, an international arbitral tribunal has unanimously ruled that China's claims to sovereign rights and jurisdiction in the SCS maritime areas encompassed by the nine-dash line are contrary to UNCLOS and without legal effect.⁹ Therefore, to the extent that the MPL purports to assert PRC jurisdiction over foreign-flagged vessels in these areas, it contravenes international law. Numerous other provisions of the MPL are equally objectionable.

II. ANALYSIS

Article 12 sets out specific duties for the coastal police agencies (CCG). Depending on where these authorities are executed, they could violate international law. The CCG is tasked, *inter alia*, with “guarding key islands and reefs, managing and protecting maritime boundaries, and preventing, stopping and eliminating acts that endanger national sovereignty, security and maritime rights and interests.”¹⁰ While safeguarding undisputed territory and maritime boundaries may be permissible, using force to execute these tasks in contested areas like the ECS and SCS could violate Article 2(4) of the U.N. Charter.¹¹

7. See BUREAU OF OCEANS AND INTERNATIONAL AND ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, U.S. DEPARTMENT OF STATE, LIMITS IN THE SEA NO. 117: STRAIGHT BASELINE CLAIMS: CHINA (1996), <https://www.state.gov/wp-content/uploads/2020/01/LIS-117.pdf>.

8. See Pedrozo, *supra* note 6.

9. South China Sea Arbitration (Phil. v. China), Case No. 2013–19, PCA Case Repository, Award, ¶¶ 169–278, 631, 682, 1203B(2) (Perm. Ct. Arb. 2016), <https://pca-cpa.org/en/cases/7/> [hereinafter SCS Award]; Michael R. Pompeo, U.S. Secretary of State, Press Statement, U.S. Position on Maritime Claims in the South China Sea (July 13, 2020), <https://2017-2021.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea/index.html> [hereinafter U.S. SCS Position].

10. MPL, *supra* note 1, art. 12.

11. U.N. Charter art. 2 ¶ 4.

Similarly, protecting “important maritime targets and major activities” is of concern.¹² If this provision is intended to authorize the use of the CCG to protect survey vessels (e.g., *Haiyang Dizhi 8*) or oil rigs (e.g., *Hai Yang Shi You 981*) engaged in hydrocarbon exploration in foreign EEZs and continental shelves,¹³ or protect Chinese fishing vessels engaged in illegal, unreported, and unregulated fishing in the SCS,¹⁴ such activities would interfere with the sovereign resource rights of other nations and would directly violate UNCLOS.¹⁵ Coastal States enjoy exclusive sovereign rights, to the exclusion of all other States, over the living and non-living resources in their EEZ and continental shelf.¹⁶

Chapter III (Maritime Security) of the MPL also contains several articles that potentially violate fundamental principles of international law. For example, foreign ships that “illegally enter” China’s territorial sea may be ordered to “leave immediately.”¹⁷ Article 17 also authorizes the CCG to take enforcement measures in the territorial sea, “such as detention, forced removal, and forced towing.”¹⁸ Without defining the meaning of illegal entry, the law could be used as a subterfuge to hamper the right of innocent passage, which is guaranteed to all ships of all States and cannot be impaired or denied by China except in accordance with UNCLOS.¹⁹

Article 20 authorizes the CCG to use force to stop foreign entities from constructing buildings or structures and installing fixed or floating devices, to include the demolition of these facilities, in waters under PRC jurisdiction.²⁰ All of the SCS claimants except Brunei have established outposts on several features also claimed by China.²¹ Article 20 appears to authorize the destruction of these facilities, which would constitute an illegal use of force

12. MPL, *supra* note 1, art. 12.

13. Huong Le Thu, *China’s Incursion into Vietnam’s EEZ and Lessons from the Past*, ASIA MARITIME TRANSPARENCY INITIATIVE (Aug. 8, 2019), <https://amti.csis.org/chinas-incursion-into-vietnams-eez-and-lessons-from-the-past/>.

14. Jose Katigbak, *Chinese Coast Guard Regularly Intimidate Filipino Fishermen*, PHILSTAR GLOBAL (Mar. 29, 2019), <https://www.philstar.com/headlines/2019/03/29/1905562/chinese-coast-guard-regularly-intimidate-filipino-fishermen>.

15. SCS Award, *supra* note 9, ¶¶ 649–814; U.S. SCS Position, *supra* note 9.

16. UNCLOS, *supra* note 6, art. 56.

17. MPL, *supra* note 1, art. 17.

18. *Id.* art. 17.

19. UNCLOS, *supra* note 6, arts. 17, 24.

20. MPL, *supra* note 1, art. 20.

21. U.S. DEPARTMENT OF DEFENSE, ASIA-PACIFIC: MARITIME SECURITY STRATEGY 15–16 (2015), https://dod.defense.gov/Portals/1/Documents/pubs/NDAA%20A-P_Maritime_Security_Strategy-08142015-1300-FINALFORMAT.PDF.

inconsistent with the purposes of the United Nations and a clear violation of Article 2(4) of the Charter. It also could have unintended consequences, particularly in the ECS and SCS, if China uses the law to justify increased deployments of CCG ships to the Senkakus and Spratlys to defend Chinese sovereignty claims and protect Chinese fishermen.²²

The United States has repeatedly stated that the Senkakus, as a territory administered by Japan, are covered by Article V of the U.S.-Japan mutual defense treaty.²³ A Chinese attack on the Senkakus, to include actions by the CCG, would trigger U.S. defense obligations under the treaty.²⁴ An attack by the CCG on Philippine military forces in the SCS at Second Thomas Shoal or Scarborough Shoal would likewise invoke U.S. defense obligations under Articles IV and V of the U.S.-Philippines Mutual Defense Treaty (MDT).²⁵

Philippine marines maintain an outpost on the BRP *Sierra Madre*, a Philippine Navy warship intentionally grounded on Second Thomas Shoal in 1999. The presence of these marines has, in effect, been validated by the arbitral tribunal award, which concluded that the Shoal is a low-tide elevation that is part of the Philippine EEZ and continental shelf and therefore not subject to appropriation by China.²⁶ On occasion, the CCG and Chinese Navy have attempted to interfere with the resupply of the marines but have not yet tried to expel them from the Shoal.²⁷ The MPL could prompt a CCG attack on the marines, which would clearly invoke U.S. defense obligations. Although the United States does not take a position regarding the Philippines

22. Aakriti Sharma, *Japan Could Face the Brunt of Chinese Navy as Beijing Drafts Another Powerful Law Over Contested Waters*, EURASIAN TIMES (Nov. 6, 2020), <https://eurasian-times.com/japan-could-face-the-brunt-of-chinese-navy-as-beijing-drafts-another-powerful-law-over-contested-waters/>.

23. Joint Statement from President Donald J. Trump and Prime Minister Shinzo Abe, (Feb. 10, 2017), <https://kr.usembassy.gov/021017-joint-statement-president-donald-j-trump-prime-minister-shinzo-abe/>.

24. Treaty of Mutual Cooperation and Security between the United States of America and Japan art. V, Japan-U.S., Jan. 19, 1960, 11 U.S.T. 1632, T.I.A.S. No. 3547, 273 U.N.T.S. 223.

25. Mutual Defense Treaty Between the United States and the Republic of the Philippines arts. IV–V, Phil.-U.S., Aug. 30, 1951, 3 U.S.T. 4644, T.I.A.S. No. 2617, 179 U.N.T.S. 133 [hereinafter U.S.-RP MDT].

26. SCS Award, *supra* note 9, ¶¶ 309, 381, 383, 627.

27. Raul Pedrozo, *Stop China's Unlawful "Great Wall" in the South China Sea*, NATIONAL INTEREST (Sept. 3, 2014), <https://nationalinterest.org/feature/stop-china%E2%80%99s-unlawful-great-wall%E2%80%9D-the-south-china-sea-11182>.

territorial claims in the SCS, the MDT applies if there is an armed attack on the armed forces, public vessels, or aircraft of either party in the Pacific.²⁸

The CCG could also rely on the MPL to justify increased interference with U.S. ships engaged in freedom of navigation operations (FONOPS), military surveys, and presence operations in the SCS. China has repeatedly protested U.S. FONOPS in the Spratlys and Paracels as an infringement of Chinese sovereignty. Article 21 illegally authorizes the CCG to use force, including “forced eviction and forced towing,”²⁹ against foreign warships and other sovereign immune vessels that refuse to leave waters under PRC jurisdiction for purported violations of China’s laws and regulations. Except in situations where a foreign warship has demonstrated hostile intent or committed a hostile act, the sole remedy for noncompliance with coastal State laws and regulations in the territorial sea is an order to leave the territorial sea and a diplomatic protest.³⁰ Seaward of the territorial sea, foreign warships and other sovereign immune vessels have complete immunity from the jurisdiction of any State other than the flag State.³¹ A threat or use of force by the CCG against a U.S. warship would certainly generate a response in self-defense by the warship consistent with the U.S. Standing Rules of Engagement.³²

Finally, Article 22 allows the CCG to use all necessary measures, including the use of weapons to stop, *inter alia*, infringement of its sovereignty, sovereign rights, and jurisdiction.³³ As previously discussed, the use of force against sovereign immune vessels is inconsistent with international law. Similarly, the use of force against other ships must conform to existing State practice on the use of force by maritime law enforcement authorities, as discussed below.

Article 25 is highly problematic from a freedom of navigation perspective in that it authorizes the establishment of temporary maritime security zones restricting or prohibiting the passage or stay of ships in waters subject to PRC jurisdiction. These zones may be established for any of the following reasons: (1) to perform maritime security tasks; (2) to combat illegal and criminal activities at sea; (3) to deal with emergencies at sea; (4) to protect

28. U.S.-RP MDT, *supra* note 25, art. V.

29. MPL, *supra* note 1, art. 21.

30. UNCLOS, *supra* note 6, art. 30.

31. *Id.* arts. 58, 86, 95–96.

32. Chairman, Joint Chiefs of Staff, CJCSI 3121.01B, Standing Rules of Engagement (SROE)/Standing Rules for the Use of Force (SRUF) for U.S. Forces (2005).

33. MPL, *supra* note 1, art. 22.

marine resources and the ecological environment; or (5) any other situation that requires the delimitation of temporary maritime security zones.³⁴

UNCLOS allows a coastal State to temporarily suspend innocent passage in a specified area of its territorial sea “if such suspension is essential for the protection of its security, including weapons exercises.”³⁵ Thus, establishing a temporary maritime security zone in the territorial sea for a brief period to perform maritime security tasks or combat illegal and criminal activities at sea may be permissible under UNCLOS. However, beyond the territorial sea, all ships enjoy high seas freedom of navigation and no State may validly subject any part of the high seas to its sovereignty.³⁶ Accordingly, China may not establish maritime security zones beyond its territorial sea for any of the enumerated reasons.

Similarly, coastal State authority beyond the territorial sea to protect marine resources and the marine environment is limited. Article 211 of UNCLOS allows coastal States to adopt laws and regulations for the prevention, reduction, and control of marine pollution from foreign vessels in the territorial sea, but these laws and regulations may not hamper innocent passage.³⁷ Thus, even in the territorial sea, the passage of foreign ships may not be impeded. In the EEZ, coastal State authority is limited to controlling vessel-source pollution by giving effect to International Maritime Organization-approved international rules and standards, which do not include the designation of maritime security zones or denial of passage.³⁸ Finally, coastal States may, consistent with UNCLOS Articles 60 and 80, establish reasonable safety zones up to five hundred meters around artificial islands, installations, and structures in the EEZ and on the continental shelf to ensure the safety of navigation and that of the installations and structures.³⁹

III. MARITIME LAW ENFORCEMENT USE OF FORCE

It is not uncommon or unlawful for a coast guard to use force in the execution of its mission to the extent the force used is reasonable and necessary under the circumstances. The U.S. Coast Guard (USCG), for example, is tasked with making inquiries, examinations, inspections, searches, seizures,

34. *Id.* art. 25.

35. UNCLOS, *supra* note 6, art. 25.

36. *Id.* arts. 58, 86–87, 89.

37. *Id.* art. 211.

38. *Id.*

39. *Id.* art. 60, 80.

and arrests upon the high seas and in waters over which the United States has jurisdiction for the prevention, detection, and suppression of violations of U.S. laws. In the execution of these duties, USCG personnel may board any vessel subject to U.S. jurisdiction; address inquiries to those on board; examine the ship's documents and papers; examine, inspect, and search the vessel; and use all necessary force to compel compliance.

USCG personnel may also arrest persons on board and seize the vessel if they determine that U.S. laws have been violated.⁴⁰ However, USCG personnel may only use the force that is objectively reasonable considering the facts and circumstances confronting them at the time force is applied. In this regard, reasonableness is judged from the perspective of a reasonable officer on the scene, not with the 20/20 vision of hindsight. Accordingly, there is a range of responses that may be reasonable and appropriate under a particular set of circumstances. Once physical force is used, it will be discontinued when resistance ceases or when the incident is under control.⁴¹

Although not specifically applicable to maritime law enforcement operations, the UN Code of Conduct for Law Enforcement Personnel similarly provides that law enforcement officials “may use force only when strictly necessary and to the extent required for the performance of their duty.”⁴² In other words, the use of force is the exception—not the rule—and any use of force must be “reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest” of a suspected offender.⁴³ Additionally, under UN rules, if the use of force or firearms is unavoidable, it shall be proportionate to the “seriousness of the offense and legitimate objective to be achieved,” and “minimize damage and injury, and respect and preserve human life.”⁴⁴

40. 14 U.S.C. § 89.

41. Memorandum from Acting Deputy Secretary of Homeland Security and Under Secretary for Management to Component Heads, Policy Statement 044-05, Department Policy on the Use of Force (Sept. 7, 2018), https://www.dhs.gov/sites/default/files/publications/mgmt/law-enforcement/mgmt-dir_044-05-department-policy-on-the-use-of-force.pdf [hereinafter DHS Policy Statement 044-05].

42. G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials art. 3 (Dec. 17, 1979) [hereinafter UN Code of Conduct].

43. *Id.* art. 3 cmt.

44. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, U.N. Doc. A/CONF.144/28/Rev.1, at 112 (Aug. 27 – Sept. 7, 1990) [hereinafter UN Basic Principles on Use of Force].

Maritime law enforcement (MLE) personnel are expected to use tactics and techniques that effectively bring an incident under control, ensures their safety, and minimizes the risk of unintended injury or serious property damage. There is no requirement, however, that MLE personnel meet force with equal or lesser force. Nor do MLE personnel have a duty to retreat to avoid the reasonable use of force or wait for an attack before using reasonable force to stop a threat. Moreover, in exigent situations, for individual self-defense or defense of another, MLE personnel are authorized to use any available object or technique in a manner that is reasonable considering the circumstances. Nonetheless, MLE personnel should avoid intentionally and unreasonably placing themselves in a position in which they have no alternative but to use deadly force.⁴⁵

Under the U.S. rules, if feasible, prior to using force, MLE personnel should identify themselves and issue a verbal warning to comply with their instructions. In determining whether a warning is feasible under the circumstances, MLE personnel should consider, *inter alia*, whether the resulting delay in issuing a warning is likely to (1) increase the danger to themselves or others, including any victims and/or bystanders, (2) result in the destruction of evidence, (3) allow a subject to escape, or (4) result in the commission of a crime. If a warning is issued, MLE personnel should afford the subject a reasonable opportunity to voluntarily comply before using force.⁴⁶

The UN Principles on Use of Force contain a similar requirement. Law enforcement officials “shall identify themselves . . . and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed,” unless doing so would “unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons or would be clearly inappropriate or pointless in the circumstances of the incident.”⁴⁷

When conducting maritime law enforcement operations, USCG personnel may use warning shots only as a signal to a vessel to stop, and only after all other available means of signaling have failed. USCG personnel may also discharge firearms to disable moving vessels or other maritime conveyances.⁴⁸ However, before firing at or into a vessel, USCG personnel will first fire a gun as a warning signal unless they determine that firing a warning signal will unreasonably endanger persons or property in the vicinity of the

45. DHS Policy Statement 044-05, *supra* note 41.

46. *Id.*

47. UN Basic Principles on Use of Force, *supra* note 44.

48. DHS Policy Statement 044-05, *supra* note 41; 14 U.S.C. § 526.

vessel to be stopped.⁴⁹ Warning shots and disabling fire are not intended to cause bodily injury. Accordingly, since warning shots and disabling fire are inherently dangerous, they should be used with all due care and with safety as the primary consideration. Additionally, if warning shots or disabling fire is warranted, each shot must have a defined target.⁵⁰

MLE personnel may use deadly force only when they have a reasonable belief that the subject of such force poses an imminent threat of death or serious bodily injury to them or another person. Deadly force may not be used solely to prevent the escape of a fleeing subject unless MLE personnel have a reasonable belief that the subject poses a significant threat of death or serious physical harm to them or others, and such force is necessary to prevent escape. Discharging a firearm against a person constitutes the use of deadly force. It is to be done only with the intent of preventing or stopping the threatening behavior that justifies the use of deadly force. Under the U.S. rules, firearms are not to be discharged solely as a warning or signal or solely to disable moving vessels unless constituting a warning shot or disabling fire.⁵¹

Similarly, the use of firearms under the UN Code of Conduct is an extreme measure, and “every effort should be made to exclude the use of firearms.”⁵² It provides that law enforcement officials shall, as far as possible, “apply non-violent means before resorting to the use of force and firearms,” and “may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”⁵³ As a general rule, law enforcement officials should not use firearms unless “a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”⁵⁴

Accordingly, while the CCG may use force to execute its mission, it cannot be indiscriminate; any force used must be reasonable and necessary under the circumstances. The use of force against a foreign-flagged vessel that intrudes into Chinese-claimed territorial waters or threatens Chinese territorial claims or fails to heed an order or a warning may not be reasonable and necessary under a totality of the circumstances.

49. 14 U.S.C. § 526.

50. DHS Policy Statement 044-05, *supra* note 41.

51. *Id.*

52. U.N. Code of Conduct, *supra* note 42, art. 3 cmt.

53. U.N. Basic Principles on Use of Force, *supra* note 44.

54. U.N. Code of Conduct, *supra* note 42, art. 3 cmt.

Indiscriminate use of force would violate international law. In the 1929 *I'm Alone* case, an arbitration commission found that a USCG cutter crew's decision to intentionally sink a vessel was not justified under international law.⁵⁵ In that case, the USCG pursued the vessel for two days for suspected smuggling of liquor. The USCG personnel then sank the vessel after the captain refused multiple orders and signals, including the use of warning shots and disabling fire, to heave to for boarding.

Similarly, in *Red Crusader* (1961), a commission of enquiry found that a Danish frigate had exceeded the legitimate use of force by firing solid, non-explosive gunshots at the *Red Crusader's* scanner, mast, masthead light, hull, and stern without warning, thereby creating a danger to those on board the vessel without proven necessity, even though the vessel was not sunk and no one was injured.⁵⁶ The *Red Crusader* had been boarded for alleged illegal fishing but fled the scene with two Danish sailors on board and refused to heave to after the Danish frigate fired four warning shots, accompanied by sound signals to stop.

Finally, in the *M/V Saiga* judgment, the International Tribunal for the Law of the Sea found that the use of force by a Guinean patrol boat to stop and board the *Saiga* for an alleged violation of Guinean customs laws, both before and after the boarding, was excessive and unreasonable, and endangered human life.⁵⁷ The Tribunal determined that international law requires that the use of force must be avoided if possible and, if the use of force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. When boarded on the high seas, the *Saiga*, a coastal tanker, was fully laden with gas oil and had recently provided fuel to fishing vessels in Guinea's contiguous zone. The Guinean patrol boat opened fire on the tanker with live ammunition using solid shot from large-caliber automatic weapons without issuing any signal or warning, as required by international law and practice. The Tribunal also found that the boarding party's use of weapons was excessive given that the tanker's crew did not resist and did not threaten the boarding party.

55. S.S. "I'm Alone" (Can. v. U.S.), 3 R.I.A.A. 1609 (1935).

56. *Red Crusader* (U.K. v. Den.), 29 I.L.R. 521 (Comm'n of Enquiry 1962).

57. *M/V Saiga* (No. 2) (St. Vincent v. Guinea), Judgment of July 1, 1999, 2 ITLOS Rep.

IV. CONCLUSION

To be fair, not all of the MPL is legally objectionable. Chapter VI, which regulates the use of weapons by CCG personnel, could arguably be interpreted to comport with international maritime law enforcement standards. Article 47 authorizes the use of small arms weapons if there is evidence that a ship is carrying criminal suspects or illegally carrying weapons, ammunition, state secrets, or drugs and other items and refuses to obey an order to stop. Use of small arms is also authorized if a foreign ship enters waters under PRC jurisdiction and illegally engages in production activities, refuses to obey an order to stop, or refuses to accept boarding or inspection, and the use of other measures is not sufficient to stop the illegal act.⁵⁸ Article 48 authorizes the use of shipborne and airborne weapons, in addition to small arms, when the CCG is (1) performing maritime anti-terrorism missions, (2) dealing with serious incidents of violence at sea, or (3) attacked by weapons or other dangerous methods.⁵⁹ A prior warning that the use of weapons is imminent is not required by Article 49 if giving a warning “may cause more serious harmful consequences.”⁶⁰ Finally, Article 50 limits the use of weapons to situations that are reasonably necessary and requires that CCG personnel try to avoid or reduce unnecessary casualties and property losses.⁶¹ Thus, on its face, Chapter VI could be applied in a manner that is consistent with international maritime law enforcement standards regarding the use of weapons.

However, China does not have a good track record when it comes to observing the rules-based international legal order when conducting maritime law enforcement activities.⁶² The CCG has repeatedly harassed⁶³ and engaged in excessive use of force against Vietnamese,⁶⁴ Japanese,⁶⁵ and

58. MPL, *supra* note 1, art. 47.

59. *Id.* art. 48.

60. *Id.* art. 49.

61. *Id.* art. 50.

62. Press Statement, Morgan Ortagus, U.S. Department of State Spokesperson, PRC’s Reported Sinking of a Vietnamese Fishing Vessel in the South China Sea (Apr. 6, 2020).

63. U.S. SCS Position, *supra* note 9.

64. Press Release, U.S. Department of Defense, China Coast Guard Sinking of a Vietnam Fishing Vessel (Apr. 9, 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2143925/china-coast-guard-sinking-of-a-vietnam-fishing-vessel/>.

65. Matthew M. Burke & Aya Ichihashi, *Japan Coast Guard Protects Fishing Boat from Chinese Vessels Near Senkaku Islands*, STARS AND STRIPES (Oct. 13, 2020),

Filipino⁶⁶ fishermen to advance China's illegal claims in the ECS and SCS and unlawfully deny access to offshore resources in coastal State EEZs. Given the CCG's prior malign behavior and disregard for international law, it is unlikely that the MPL will be implemented in accordance with established maritime law enforcement practices.

It would be a grave mistake for China to use the new law as a subterfuge to advance its illegal maritime and territorial claims in the ECS and SCS, to continue interfering with coastal State resource rights, or to interfere with legitimate uses of the sea by the international community. The United States will stand by its allies and partners in the region to protect their sovereign rights to offshore resources, consistent with their rights and obligations under international law, and will defend navigational rights and freedoms to ensure a free and open Indo-Pacific. Regional States must also do their part and hold China accountable for its illegal actions, whether that is before an international tribunal or domestic court, through diplomatic overtures or use of lawful countermeasures, or in the court of public opinion.

<https://www.stripes.com/news/pacific/japan-coast-guard-protects-fishing-boat-from-chinese-vessels-near-senkaku-islands-1.648358>.

66. Steven Stashwick, *Chinese Vessel Rams, Sinks Philippine Fishing Boat in Reed Bank*, THE DIPLOMAT (June 14, 2019), <https://thediplomat.com/2019/06/chinese-vessel-rams-sinks-philippine-fishing-boat-in-reed-bank/>.